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Harold I. Maesteller, Jr.  
Bethlehem Steel Corporation  
1170 8th Avenue  
RM 1969 Martin Tower  
Bethlehem, PA 18016-7699

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SEP 08 1999

In re Application of  
Jay W. Larson  
Application No. 08/950,343  
Filed: October 14, 1997  
Attorney Docket No. 850-702-004

SPECIAL PROGRAMS OFFICE  
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In re Application of  
Jay W. Larson  
Application No. 09/264,991  
Filed: January 4, 1999  
Attorney Docket No. 850-702-004

DECISION GRANTING  
PETITION

*File  
cover  
info*

This is a decision on the petition filed June 2, 1999, requesting that Application No. 09/264,991 be treated as an application under 37 CFR 1.53(b) and be accorded a filing date of January 4, 1999.

A request for a CPA based on prior application No. 08/950,343 was deposited on January 4, 1999. Since the issue fee was paid in the prior application on August 24, 1998, a petition under 37 CFR 1.313(b)(5) was simultaneously filed in the prior application. However, the petition and the file of the prior application were not received by the appropriate official within sufficient time to avert issuance of the prior application and the prior application was patented on February 2, 1999. An application which issues as a patent cannot be processed as a proper CPA.

The present petition again requests that the request for a CPA be treated as a continuation application filed under 37 CFR 1.53(b). The petition is accompanied by what petitioner describes in the petition as "[a] true copy of the nonprovisional application no. 08/950,343, as filed, and designated in the application papers filed under 37 CFR 1.53, including specification, drawings, signed declaration, and assignment."

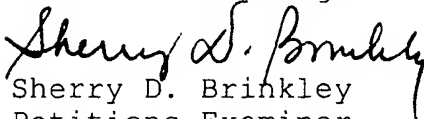
*Kim  
Rec'd 9/13/99*

The petition is granted.

Application No. 08/950,343 and Application No. 09/264,991 are being forwarded to the Office of Finance for crediting the \$760.00 CPA filing fee and the \$90.00 excessive claim fees paid in prior application No. 08/950,343 on January 12, 1999, and for charging the \$760.00 filing fee and \$90.00 excessive claim fees due in application No. 09/264,991 to deposit account No. 02-2225.

Application No. 08/950,343 will then be returned to the files repository.

Application No. 09/264,991 will then be returned to Initial Patent Examination Division for processing as a continuation application under 37 CFR 1.53(b), not as a CPA under 37 CFR 1.53(d), with a filing date of January 4, 1999, using the copy of the specification, drawings and declaration supplied on June 2, 1999. No surcharge is required in application No. 09/264,991.



Sherry D. Brinkley


Petitions Examiner

Office of Petitions

Office of the Deputy Assistant Commissioner

for Patent Policy and Projects

(703) 305-9282

  
Conferee: Fred A. Silverberg